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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,405	02/12/2004	Sean P. Kyne	MAT 319	7763
23581	7590	02/26/2008		
KOLISCH HARTWELL, P.C. 520 SW YAMHILL STREET, Suite 200 PORTLAND, OR 97204			EXAMINER	
			HYLINSKI, ALYSSA MARIE	
			ART UNIT	PAPER NUMBER
			3711	
			MAIL DATE	DELIVERY MODE
			02/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/779,405

Applicant(s)

KYNE ET AL.

Examiner

Alyssa M. Hylinski

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1-3, 5-10, 12-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dods (6152298), Lapides (3173540) and Goldfarb (6287492). Dods discloses a backing sheet (22) with a toy (14) that can take the shape of a character (column 2 lines 17-20) and panel (12) associated with the backing sheet (Fig. 1) by a transparent cover blister (Fig. 2) that substantially encloses the toy and panel (Fig. 1). A toy support blister (18) supports the toy and is located such that the panel is located between the support and cover blisters (column 6 lines 15-21). A panel support blister (30) is disposed between the panel and the backing sheet (Fig. 2). Both support blisters support the panel (Fig. 2). The panel includes an image that is associated with the toy and functions as part of a base (Figs. 1 & 3). The device of Dods discloses the basic inventive concept, substantially as claimed, with the exception of the backing sheet having an aperture with which the panel is aligned and the panel being a lithophane panel. Lapides discloses packaging for an object having a cover and backing sheets (Fig. 3) with apertures (12) formed therein and in which is aligned an object (Fig. 1), showing this feature to be old in the display packaging art. It would have been obvious to one of ordinary skill in the art from the teaching of Lapides to include an aperture in the backing sheet of Dods in order to not hinder a potential purchaser's view of the item while still in the packaging. Goldfarb discloses a lithophane-type panel (903) that can be attached to a toy figure (Fig. 20) to create interesting visual displays when backlit (column 8 lines 5-7). The panel is formed of translucent material having a surface

shaped with an image by means of contoured recesses thereby forming differential thicknesses in the plate (abstract). Although the reference utilizes a pliable material to form the panel, it does disclose that lithophanes are known to be formed of more rigid materials (column 1 lines 12-26). Goldfarb also shows that it would be desirable to combine lithophane-type works with toy figures (Fig. 20) Therefore, it would have been obvious to one of ordinary skill in the art from the teaching of Goldfarb to utilize lithophane-type panels in conjunction with toy action figures since lithophanes create beautiful and interesting effects that can amuse or delight a child. Even though Goldfarb discloses the lithophane panel is made from a pliable and compressible material, it is still capable of being packaged and the examiner notes that a mere selection of known materials, on the basis of suitability for the intended use would be entirely obvious. *See in re Leshin, 125 USPQ 416 (CCPA 1960).*

2. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dods, Lapides and Goldfarb. The references disclose the basic inventive concept, substantially as claimed, with the exception of including a plurality of toys and panels. It would have been obvious to one of ordinary skill in the art to multiply the number toys and panels, since such a modification would have involved a mere duplication of parts. A duplication of parts is generally recognized as being within the general skill of a worker in the art. *See In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).*

3. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dods, Lapides, Goldfarb and Mickelberg (5289916). The references disclose the basic inventive concept, substantially as claimed, with the exception of having an indication

that the panel is viewable when backlit. Mickelberg discloses a packaged toy having instructions or indicia on the packaging to alert a person to features available from the toy while still packaged (Fig. 1). Although the reference does not expressly teach an indication that a panel is viewable when backlit it teaches providing instructions to a potential consumer on the packaging.

Response to Arguments

4. Applicant's arguments filed 11/29/07 have been fully considered but they are not persuasive.
5. In response to applicant's argument that Goldfarb discloses lithophanes made of pliable material making it unsuitable for the intended purpose, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Goldfarb is being used to teach the desirability of combining toy figures with lithophane panels.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH

/Gene Kim/
Supervisory Patent Examiner, Art Unit 3711